

Jonathan L. Hilton, Esq.
HILTON PARKER LLC
7658 Slate Ridge Blvd.
Reynoldsburg, OH 43068
o: (614) 992-2277
e: jhilton@hiltonparker.com
Local Counsel for Plaintiff

Baruch S. Gottesman, Esq.
GOTTESMAN LEGAL PLLC
11 Broadway, Suite 615
New York NY 10004
o: (212) 401-6910
e: bg@gottesmanlegal.com
Counsel for Plaintiff
Application for Admission Pro Hac Vice pending

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
Eastern Division -

SRINIVASA RAO GUBBALA,

Plaintiff,

~ versus ~

ABERCROMBIE & FITCH TRADING CO.,

Defendant.

Index No. 1 : 24 - cv -

**ORIGINAL COMPLAINT
FOR DE NOVO REVIEW
OF DECISION OF
TRADEMARK TRIAL
AND APPEAL BOARD**

Comes now the Plaintiff **SRINIVASA RAO GUBBALA**, by and through Counsel with their Original Complaint for De Novo Review of a Decision of the Trademark Trial and Appeal Board, as against the Defendant **ABERCROMBIE & FITCH TRADING CO.**, and does respectfully allege as follows:

A. NATURE OF THIS ACTION

1. On December 17, 2019, the United States Patent and Trademark Office (USPTO) published the Plaintiff's mark – shown below – in the Official Gazette for use in apparel.



Illustration 1 – Drawing submitted July 31, 2019 in USPTO Application Serial Number 88555046 (“Application”) available online at <https://tsdr.uspto.gov/documentviewer?caseId=sn88555046&docId=DRW20190803192217> and annexed as Exhibit A

2. Like a gannet swooping into the sea-shelf to forage its prey, the Defendant Abercrombie & Fitch Trading Co. pounced on the Application and claimed that the Plaintiff's true-to-life, multi-color, shaded illustration of a diving catch by a gannet somehow conflicted with the Defendant's stylized, solid tone, silhouette, still-life of a common seagull, an example of which is shown here:



Illustration 2 – Excerpt from Defendant's Notice of Opposition at p. 3 dated April 14, 2020 available online at <https://ttabvue.uspto.gov/ttabvue/ttabvue-91255288-OPP-1.pdf> and annexed as Exhibit B.

3. The Trademark Trial and Appeal Board, trying their hands as amateur field ornithologists, concluded that the two marks had overall visual similarity and commercial impression, *Abercrombie & Fitch Trading Co. v. Gubbala*, Opposition No. 91255288, 2023 TTAB LEXIS 518, at p. 24 (Trademark Trial & App. Bd. December 8, 2023), *available online at* <https://ttabvue.uspto.gov/ttabvue/ttabvue-91255288-OPP-37.pdf> (last checked Feb. 4, 2024) copy annexed as **Exhibit C**, and for these and other reasons upheld the Defendant's Opposition to the Registration of the Plaintiff's mark.

4. But that can't be right. On its face, the Marks look nothing like each other and therefore the Plaintiff respectfully seeks *de novo* judicial review, and upon such review that the Honorable Court issue an Order to vacate the TTAB's decision, to adjudge that the Plaintiff is entitled to a registration of their Mark upon the application involved.

5. In support of this Complaint for *De Novo* Review of a Decision of the Trademark Trial and Appeal Board the Plaintiff states:

B. THE PARTIES

6. Plaintiff Srinivasa Rao Gubbala is a natural person resident at Portland in the County of Multnomah in the State of Oregon.

7. Upon information and belief, Abercrombie & Fitch Trading Co. is a business corporation organized and existing whose principal place of business is at New Albany, in the County of Franklin in the State of Ohio.

C. JURISDICTION AND VENUE

8. The Lanham Act, 15 U.S.C. § 1071(b)(1) grants a remedy by a civil action in District Court to a party that is dissatisfied with the decision of the Trademark Trial and Appeal Board, when no appeal has been taken to the United States Court of Appeals for the Federal Circuit.

9. Plaintiff is dissatisfied with the decision of the Trademark Trial and Appeal Board which upheld the Defendant's Opposition to the Registration of the Plaintiff's Mark, at *Abercrombie & Fitch Trading Co. v. Gubbala*, Opposition No. 91255288, 2023 TTAB LEXIS 518 (Trademark Trial & App. Bd. December 8, 2023) and the Plaintiff is not aware of any other appeal having been taken.

10. This Honorable Court has personal jurisdiction over Defendant Abercrombie & Fitch Trading Co. because it is organized under Ohio law and its principal place of business and headquarters is at New Albany in the County of Franklin here in Ohio.

11. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) because the Defendant resides here in the Southern District of Ohio.

D. PROCEDURAL HISTORY BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

12. Below is a chart showing the full docket of the Application including the date for each item and the "document description" as docketed by the USPTO. That full docket is also available online at https://tsdr.uspto.gov/#caseNumber=88555046&caseSearchType=US_APPLICATION&caseType=DEFAULT&searchType=statusSearch under the "Trademark Documents tab".

| Date | Item |
|-------------------|--|
| December 17, 2019 | OG Publication Confirmation |
| November 27, 2019 | Notice of Publication |
| November 27, 2019 | Notification Of Notice of Publication |
| November 6, 2019 | TRAM Snapshot of App at Pub for Opposition |
| November 6, 2019 | Amendment and Mail Process Complete |
| November 4, 2019 | Response to Office Action |
| November 3, 2019 | Offc Action Outgoing |
| November 3, 2019 | XSearch Search Summary |
| August 16, 2019 | Design Search Code Corr Project |
| July 31, 2019 | Drawing |
| July 31, 2019 | TEAS Plus New Application |

Chart 1 – Full Docket of Plaintiff’s Application Serial Number 88555046 before the USPTO

13. The line items that are most relevant here are:

- a. The Plaintiff’s Application submitted on **July 31, 2019**;
- b. The “Drawing” (shown above at Illustration 1 and annexed as Exhibit A) submitted with the Application; and
- c. Official Gazette Publication docketed **December 17, 2019**.

14. For completeness, a collation of the full docket is annexed as Exhibit D.

15. After an extension to oppose was granted, on **April 14, 2020**, the Defendant filed a Notice of Opposition, a copy of which is annexed as Exhibit B, in which they alleged that the Mark “so closely resemble[d] Abercrombie & Fitch Trading Co.’s] previously used and registered A & F Bird Design Marks in appearance and commercial impression so as to be likely

to cause confusion, mistake or deception under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).” Opposition at ¶ 16. For these and other related reasons, the Defendant petitioned that Plaintiff be refused registration of their Mark.

16. After a Hearing, the Trademark Trial and Appeal Board issued a decision on December 8, 2024 sustaining the opposition and TTAB refused the Plaintiff’s application, *See Exhibit C*.

17. Below is a chart showing the full docket of the Opposition including the date for each item and the “document description” as docketed by the USPTO. That full docket is also available online at <https://tsdr.uspto.gov/#caseNumber=88555046&caseSearchType=USAPPLICATION&caseType=DEFAULT&searchType=statusSearch> under the “Proceedings Documents tab”.

| Date | Item |
|-------------------|--|
| December 8, 2023 | FINAL DECISION: OPP SUSTAINED |
| October 24, 2023 | ORAL HEARING APPEARANCE RECORD |
| September 8, 2023 | VIDEO ORAL HEARING SCHEDULED |
| June 23, 2023 | P RESP TO BD ORDER/INQUIRY |
| June 8, 2023 | ORAL HEARING REQUESTED; RESPONSE DUE |
| May 9, 2023 | P REQ FOR ORAL HEARING |
| May 1, 2023 | P REBUTTAL BRIEF: TM RULE 2.128 |
| April 14, 2023 | D MAIN BRIEF: TM RULE 2.128 |
| March 15, 2023 | P CONF MAIN BRIEF |
| March 15, 2023 | P MAIN BRIEF: TM RULE 2.128 |
| January 13, 2023 | P REBUTTAL NOR ON PRINTED PUBLICATIONS (EXS A-B) |

| | |
|------------------|---|
| December 2, 2022 | TRIAL DATES RESET |
| August 8, 2022 | SUSP PEND DISP OF OUTSTNDNG MOT |
| August 5, 2022 | P REPLY IN SUPPORT OF MOTION |
| July 20, 2022 | D OPP/RESP TO MOTION |
| June 30, 2022 | P MOT TO STRIKE |
| June 15, 2022 | D NOTICE OF RELIANCE |
| June 15, 2022 | D TEST DECL OF GUBBALA (EXS 1-5) |
| April 15, 2022 | P CONF TEST DECL OF KRAMER |
| April 15, 2022 | P NOR ON PRINTED PUBLICATIONS (EXS 1-45) |
| April 15, 2022 | P TEST DECL OF KRAMER (EXS 1-44) |
| April 15, 2022 | STIP OF FACTS |
| August 13, 2021 | D CHANGE OF CORRESP ADDRESS |
| May 20, 2021 | P MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS |
| May 20, 2021 | SUSPENDED |
| May 19, 2021 | P CHANGE OF CORRESP ADDRESS |
| February 2, 2021 | EXTENSION OF TIME GRANTED |
| February 2, 2021 | P MOT FOR EXT W/ CONSENT |
| August 5, 2020 | P MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS |
| August 5, 2020 | SUSPENDED |
| May 14, 2020 | ANSWER |
| May 14, 2020 | D CHANGE OF CORRESP ADDRESS |
| April 14, 2020 | FILED AND FEE |
| April 14, 2020 | NOTICE AND TRIAL DATES SENT; ANSWER DUE |

Chart 2 – Full Docket of Defendant’s Opposition No. 91255288 before TTAB

18. For completeness, a collation of the full TTAB docket of the Opposition is annexed as Exhibit E.

**E. CLAIM FOR *DE NOVO* REVIEW
AND REVERSAL OF TTAB DECISION**

19. Plaintiff respectfully seeks *de novo* review of the TTAB's Final Decision pursuant to the Lanham Act, 15 U.S.C. § 1071(b).

20. The decision by the TTAB was error and we respectfully submit it was not supported by either the law or evidence in this matter. For that reason, the Plaintiff respectfully seeks *de novo* judicial review, and upon such review that the Honorable Court issue an Order to vacate the TTAB's decision, to adjudge that the Plaintiff is entitled to a registration of their Mark upon the application involved.

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WHEREFORE, Plaintiff respectfully prays for a judgment by this Court, against the Defendant ordering:

- A. that the TTAB Decision upholding the Opposition is vacated;
- B. that it is adjudged that the Plaintiff is entitled to a registration of their Mark upon the application involved.
- C. That Plaintiff recover its costs and attorneys' fees;
- D. That the Court grant Plaintiff such other and further relief as the Court deems just and proper.

**PLAINTIFF HEREBY RESPECTFULLY DEMANDS A TRIAL BY JURY
FOR ALL ISSUES TRIABLE BY JURY**

Dated this 4th day of February 2024

RESPECTFULLY SUBMITTED,

By:



Jonathan L. Hilton, Esq.
HILTON PARKER LLC
7658 Slate Ridge Blvd.
Reynoldsburg, OH 43068
o: (614) 992-2277
e: jhilton@hiltonparker.com
Local Counsel for Plaintiff

By:



Baruch S. Gottesman, Esq.
New York Bar No. 4480539
GOTTESMAN LEGAL PLLC
11 Broadway, Suite 615
New York, NY 10004
Phone: (212) 401-6910
bg@gottesmanlegal.com